IP 05-0810-C T/L DaimlerChrysler v Honeycutt
Judge John D. Tinder Signed on 10/24/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DAIMLERCHRYSLER SERVICES NORTH AMERICA, LLC, IN RE LARRY N. HONEYCUTT,	)	
	)	NO. 1:05-cv-00810-JDT-WTL
LARRY N. HONEYCUTT, Appellee.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DAIMLERCHRYSLER SERVICES NORTH AMERICA, LLC, Appellant, vs. LARRY N. HONEYCUTT, Appellee.	)	District Court Cause # 1:05-cv-0810-JDT-WTL
IN RE: LARRY N. HONEYCUTT, Debtor.	)	Bankruptcy Court Cause # 03-06626-JKC-13

ENTRY ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT[1]

This matter is before the court on the Appeal from the United States Bankruptcy Court Southern District of Indiana, Indianapolis Division, of DaimlerChrysler Services North America, LLC (Docket No. 6), filed June 13, 2005. In it, Appellant DaimlerChrysler Services North America, LLC ("DaimlerChrysler") contends that the Bankruptcy Court for the Southern District of Indiana erred in allowing Debtor-Appellee Larry N. Honeycutt to amend the time value of payments to it under Mr. Honeycutt's Chapter 13 Bankruptcy Plan. Mr. Honeycutt responded to the appeal on June 24, 2005, and a reply was filed on July 5, 2005. The appeal is therefore ripe for judicial determination and the court now rules as follows.

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

I. BACKGROUND

Mr. Honeycutt filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on April 15, 2003. Shortly thereafter, DaimlerChrysler filed a proof of claim in which it claimed to have had a perfected security interest in a 2000 Dodge Ram 1500 4x4 Off Road vehicle owned by Mr. Honeycutt. In his Chapter 13 Bankruptcy Plan (the "Plan"), Mr. Honeycutt proposed that the value of DaimlerChrysler's claim on the vehicle be set at $14,270, with interest payments at a rate of 6.25%. DaimlerChrysler filed an objection to the Plan, contending that it was entitled to no less than a 10.75% interest rate, the rate to which the parties had agreed in the contract of sale of the vehicle. The Plan went through several iterations that varied both the value of the vehicle and the rate of interest. On May 3, 2004, the Bankruptcy Court approved a third amended Plan, in which the interest payments to DaimlerChrysler were set at a rate of 10.75%.

One of the previous iterations of the Plan contained a provision whereby Mr. Honeycutt reserved the right to seek modification of the interest rate on DaimlerChrysler's claim in accordance with an upcoming Supreme Court decision in *Till v. SCS Credit Corp. (In re Till)*, 541 U.S. 465 (2004). However, for whatever reason, the third amended Plan contained no such provision. Two weeks after the Bankruptcy Court approved that Plan, on May 17, 2004, the Supreme Court issued its decision in *Till*. In it, the Court set forth a clear standard for determining the proper rate of interest to be paid on secured claims under 11 U.S.C. § 1325(a)(5)(B)(ii), like DaimlerChrysler's claim at issue here. In response, Mr. Honeycutt sought reconsideration of the claim, and moved to amend his Plan to reduce the interest rate on payments to DaimlerChrysler from 10.75% to 5.5%. DaimlerChrysler objected to the proposed amendment, contending that Mr. Honeycutt had not shown cause for a post-confirmation modification of a plan under 11 U.S.C. § 1329.

The Bankruptcy Court conducted a hearing on the matter on November 2, 2004. In spite of DaimlerChrysler's objection, the Court allowed Mr. Honeycutt to amend his Plan, thereby setting the interest rate on his payments to DaimlerChrysler at 5.5%, where it now stands. In its April 19, 2005 Order and Opinion, in which the Bankruptcy Court relied almost entirely on its opinion in *In re Willoughby*, 03-09312-JKC-13 (April 19, 2005), the Court denied Mr. Honeycutt's Objection to DaimlerChrysler's Proof of Claim; granted Mr. Honeycutt's Motion to Amend Confirmed Plan; granted Mr. Honeycutt's Motion to Reconsider Claim; and instructed the bankruptcy trustee to file an Amended Claims Application.

DaimlerChrysler filed an appeal of the Bankruptcy Court's decision on June 13, 2005, generally contending that the Court erred in approving the amended Plan. In the appeal DaimlerChrysler sets forth a number of specific questions of law that it believes the Bankruptcy Court wrongly decided, and primarily objects to the legal standard the Bankruptcy Court applied to its consideration of Mr. Honeycutt's motions to reconsider and amend.

II. DISCUSSION

A. Standard of Review

DaimlerChrysler generally disagrees with the Bankruptcy Court's conclusion with respect to whether Mr. Honeycutt could amend his Chapter 13 Plan under the applicable legal standards. This is a question of law. A bankruptcy court's conclusions of law are reviewed de novo. *Siemens Energy & Automation, Inc. v. Good (In re Heartland Steel, Inc.)*, 389 F.3d 741, 744 (7th Cir. 2004); *In re Chappell*, 984 F.2d 775, 779 (7th Cir. 1993). Therefore, in this case the court must conduct a de novo review of the entire record, including the Plan, all underlying

filings and briefs and the Bankruptcy Court's decision. *In re Ebbler Furniture & Appliances, Inc*., 804 F.2d 87, 89 (7th Cir. 1986); *Nat'l Rural Util. Coop. Fin. Corp. v. Wabash Valley Power Ass'n, Inc. (In re Wabash Valley Power Ass'n, Inc.*), 111 B.R. 752, 766-67 (S.D. Ind. 1990). The court has jurisdiction to do so under 28 U.S.C. § 158.

B. The Bankruptcy Court Applied the Proper Standard for Reconsideration

As DaimlerChrysler indicates, much of the court's decision here rests upon which legal standard governs consideration of Mr. Honeycutt's motions to reconsider and amend. In its decision, the Bankruptcy Court clearly found that "the proper way for Mr. Honeycutt to seek a reduction in the interest rate paid on Daimler's allowed secured claim was to seek reconsideration of the claim pursuant to 11 U.S.C. § 502(j) and Fed.R.Bankr.P. 3008." (Order at 2.) DaimlerChrysler argues that the Court's reliance on § 502(j) was misplaced, as that section does not apply to the facts presented here. It specifically contends that § 506(j) allows the court to reconsider claims only, and in this case Mr. Honeycutt was seeking broader relief by asking the Bankruptcy Court to allow modification of his Plan, and specifically the "time value" of his "plan payments" to DaimlerChrysler. Therefore, DaimlerChrysler suggests that any amendment to the Plan is barred by the principle of res judicata set forth in 11 U.S.C. § 1327, and can only be allowed under certain exceptions to that principle listed in 11 U.S.C. § 1329. Mr. Honeycutt does not respond to this argument, and instead implicitly relies on § 506(j) to argue that the Bankruptcy Court had appropriate grounds to modify his claim. The distinction is important because, as one would expect, § 1329 sets a higher standard for allowing the proposed relief than does § 502(j).

Whether the Bankruptcy Court should have relied on § 502(j) or § 1329 turns solely on whether Mr. Honeycutt was seeking reconsideration of DaimlerChrysler's claim only or his entire

Plan. His underlying relevant motions are titled "Objection to DaimlerChrysler's Proof of Claim," "Motion to Amend Confirmed Plan" and "Motion to Reconsider [DaimlerChrysler's claim #1]." The relief he sought therein was narrow—a reduction in the interest rate paid on DaimlerChrysler's allowed secured claim. DaimlerChrysler characterizes this relief as the "time value of plan payments," which it contends arises under § 1325. Section § 1325(a)(5)(B)(ii) states that:

> Except as provided in subsection (b), the court shall confirm a plan if--
>
> (5) with respect to each allowed secured claim provided for by the plan--
>
> (B) (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim . . . .

DaimlerChrysler argues that § 1325 makes the "time value of plan payments" a prerequisite to plan confirmation, and therefore, in order to modify plan payments, the plan itself must be amended. Amendment of a plan after it has been confirmed but before the completion of its payments is permitted under rare circumstances set forth in § 1329. None of them seemingly apply here.

In arguing that Mr. Honeycutt's attempt to modify the interest payments to DaimlerChrysler under his confirmed Plan required amendment of the Plan, DaimlerChrysler mischaracterizes the relief sought. While the "time value of plan payments" may be a prerequisite to plan confirmation under § 1325, it is a concept that does not exist independent of its practical application. And that practical application takes the form of interest payments on a claim. *In re Cont'l Ill. Sec. Litig*., 962 F.2d 566, 571 (7th Cir. 1992) (interest compensates for "the loss of the time value of money"); *see also Art Press Ltd. v. W. Printing Mach. Co.*, 852 F.2d 276, 278 (7th Cir. 1988). Time value theory requires the debtor to pay the creditor some

amount of interest in order to compensate the creditor for the delay in payment, or in other words, "to give the creditor full and fair value on its claim." *In re Tri Sys. Consulting & Design, Inc.*, 115 B.R. 279, 283 (Bankr. D. Colo. 1990); *see also In re Hollinger*, 245 B.R. 691, 697 (Bankr. N.D. Fl. 2000); *In re Fisher*, 29 B.R. 542, 543 (Bankr. D. Kan. 1983).

Interest payments compensating for time value are fundamentally tied to a creditor's claim. The Bankruptcy Code defines "claim" as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured . . . .

11 U.S.C. § 101(5). The legislative history of the Code evidences Congress' desire to provide an expansive definition of "claim" under § 101(4). *See Pa. Dep't of Pub. Welfare v. Davenport,* 495 U.S. 552 (1990); *Ohio v. Kovacs*, 469 U.S. 274, 279-80 (1985). Many courts, including the Seventh Circuit, have held that the broad definition of "claim" under § 101(5) includes the right to payment for interest due. *See, e.g.*, *In re Larson*, 862 F.2d 112, 119 (7th Cir. 1988); *Pierce v. Pyritz*, 200 B.R. 203, 206 (Bankr. N.D. Ill. 1996); *United States v. Stowe*, 121 B.R. 549, 552 (N.D. Ind. 1990); *In re Brinegar*, 76 B.R. 176, 178 (Bankr. Colo. 1987); *In re Stonecipher Distribs*., 80 B.R. 949 (Bankr. W.D. Ark. 1987); *Matter of Keller & Katkowsky, P.C.*, 55 B.R. 155, 156 (Bankr. E.D. Mich. 1985); *In re Treister*, 52 B.R. 735, 737 (Bankr. S.D.N.Y. 1985); *In re Coleman*, 26 B.R. 825, 831 (Bankr. D. Kan. 1985); *In re Hernando Appliances, Inc*., 41 B.R. 24

(Bankr. N.D. Miss. 1983). These courts' interpretation is consistent with the language of § 502 of the Bankruptcy Code, which governs what is to be allowed as part of a creditor's claim in bankruptcy proceedings:

> (b) The court . . . shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount except to the extent that --
>
> (2) such claim is for unmatured interest . . . .

11 U.S.C. § 502; *see also In re Pharmadyne Labs., Inc*., 53 B.R. 517, 522 (Bankr. N.J. 1985).

Based on this overwhelming precedent, and because DaimlerChrysler does not cite a single case that supports its argument to the contrary, the court concludes that the "time value of plan payments" afforded creditors and required for plan confirmation under § 1325 constitutes a part of a creditor's claim, in the form of interest. To find otherwise would defeat the clear intent of the Bankruptcy Code in creating a broad definition of "claim," and completely and unfairly preclude both debtors and creditors from altering the payment of interest on a claim after plan confirmation. Therefore, DaimlerChrysler's claim is subject to post-confirmation reconsideration under § 502(j), and it becomes necessary to determine whether the Bankruptcy Court properly allowed Mr. Honeycutt to alter the terms of his interest payments to DaimlerChrysler under that section.

C. Plan Confirmation Does Not Preclude Reconsideration of a Claim Under § 502(j)

DaimlerChrysler contends the Bankruptcy Court erred in allowing the modification of Mr. Honeycutt's payments on its claim because the Plan confirmation order was res judicata as to all the issues decided or that could have been decided at the time of confirmation. The court

agrees with this general statement, and it is well-supported in law. *See Adair v. Sherman*, 230 F.3d 890, 895 (7th Cir. 2000). However, as the Bankruptcy Court concluded, claim modification pursuant to § 502(j) appears to be an exception to this statement.

"Most courts have held that the only bar to reconsideration of a claim under § 502(j) is closure of the bankruptcy case." *In re Adams,* 275 B.R. 274, 281 (N.D. Ill. 2002); *see also In re Gomez*, 250 B.R. 397, 400 (Bankr. M.D. Fla. 1999) (citing *In re Lee*, 189 B.R. 692, 695 (Bankr. M.D. Tenn. 1995); *In re Fryer*, 172 B.R. 1020, 1024 (Bankr. S.D. Ga. 1994); *In re Immenhausen*, 166 B.R. 449, 452 (Bankr. M.D. Fla. 1994); *In re Bernard*, 189 B.R. 1017, 1020 (Bankr. N.D. Ga. 1996)). Therefore, an allowed claim under § 502(j) may be reconsidered either before or after confirmation. *In re Mason,* 315 B.R. 759, 761 (Bankr. N.D. Cal. 2004) ("No language in 11 U.S.C. § 502(j) or Fed. R. Bankr. P. 3008 limits reconsideration of claims by confirmation of a plan. To the contrary, because 11 U.S.C.S. § 502(j) deals extensively with the effect such reconsideration might have on distributions already made on claims, it contemplates that such reconsideration might occur after confirmation.").

To be sure, DaimlerChrysler cites no case or statute that prohibits post-confirmation reconsideration of claims. While it argues that 11 U.S.C. §§ 1327 and 1329 do just that, they clearly do not. The clear and unambiguous language of these statutes demonstrates that they apply only to post-confirmation plan (rather than claim) modification. The court may therefore turn to whether Mr. Honeycutt demonstrated good cause to allow for reconsideration of DaimlerChrysler's claim under § 502(j).

D. Appellee Showed "Good Cause" Under § 502(j)

DaimlerChrysler, while not accepting that (1) § 502(j) applies to the facts presented here, and (2) reconsideration is not precluded by the doctrine of res judicata, conditionally argues that

even so, Mr. Honeycutt's motions still must fail because he did not demonstrate cause for reconsideration of its claim. Mr. Honeycutt responds that the Bankruptcy Court properly concluded that he demonstrated "cause" for reconsideration of DaimlerChrysler's claim under § 502(j) by using a totality of the circumstances standard, including reliance on Federal Rules of Civil Procedure 59 and 60.

11 U.S.C. § 502(j) allows creditors and debtors to seek reconsideration of claims for cause. It specifically authorizes for the reconsideration of claims under the following circumstances:

> A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

11 U.S.C. § 502(j). Fed. R. Bankr. P. 3008 sets forth the procedure for seeking reconsideration under § 502(j): "A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order."

The Bankruptcy Code does not define "cause" for reconsideration under § 502(j). However, courts have consistently held that Fed. R. Civ. P. 60, incorporated by reference into

Bankruptcy Rule 9024, sets forth the standard whereby reconsideration of a claim after a plan has been confirmed may be had. *Nationsbanc Mortg./Fed. Nat'l Mortg. Ass'n v. Williams*, 276 B.R. 899, 906 (7th Cir. 1999) (citing *In re Cleanmaster Indus., Inc.*, 106 B.R. 628, 630 (9th Cir. BAP 1989); *In re Rankin*, 141 B.R. 315, 319 (Bankr. W. D. Tex. 1992)). While a minority of courts has set forth a different, lesser standard for reconsideration for claims not actually litigated (*see, e.g., Gomez*, 250 B.R. at 397; *In re Clark*, 172 B.R. 701, 704-05 (Bankr. S.D. Ga. 1994)), because Mr. Honeycutt filed an objection to DaimlerChrysler's proof of claim, the court declines to apply that standard here. Instead, it looks to Fed. R. Civ. P. 60.

Rule 60 governs motions for relief from final judgments. Bankruptcy Rule 9024 and Rule 60(b) set forth six grounds for granting relief:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has be reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). Applying these factors to the facts of this case, the court finds that cause existed to reconsider DaimlerChrysler's claim under Rule 60(b)(5). On May 17, 2004, the Supreme Court issued *Till*, which set forth a definitive standard for determining the proper rate of interest to be paid on secured claims "crammed down" under 11 U.S.C. § 1325(a)(5)(B)(ii). Until that point, and at the time the Bankruptcy Court confirmed Mr. Honeycutt's Plan and

approved DaimlerChrysler's claim, lower courts had no definitive guidance on how to calculate interest payments under § 1325(a)(5)(B)(ii). They chose to calculate the payments in a number of different ways, including under "formula, "cost of funds," "coerced loan" and "contract rate" approaches. In the instant case, the Bankruptcy Court applied the presumptive contract rate approach, as required by the Seventh Circuit at the time. However, subsequently in *Till*, the Supreme Court expressly disavowed the contract approach, and ruled that to determine the rate of interest to be paid on crammed down claims, lower courts are to apply the formula approach only. Because the *Till* decision reversed a prior judgment upon which approval of Mr. Honeycutt's claim was based, under Rule 60(b)(5) it was no longer equitable that the judgment should have prospective application. Therefore, the Bankruptcy Court properly allowed reconsideration of DaimlerChrysler's claim to

account for the *Till* decision interpreting § 1325(a)(5)(B)(ii), and also properly applied the change in interest rate prospectively.

Mr. Honeycutt would be substantially prejudiced if the court declined to allow amendment of his payments to DaimlerChrysler under its claim to account for the Supreme Court's mandate in *Till*. Under such circumstances, the interest collected on DaimlerChrysler's claim would be calculated under a standard that the Supreme Court expressly rejected, resulting in unfairly and substantially higher payments of interest than those required by *Till.* No case cited by DaimlerChrysler holds that the Bankruptcy Court or this court cannot reconsider the amount of an allowed claim in light of changed precedent that would lead to an inequitable prospective application of a prior judgment. And while many courts limit reconsideration of claims to a reasonable length of time after plan confirmation (*see In re Clark*, 172 B.R. 701, 705 (Bankr. S.D. Ga. 1994)), Mr. Honeycutt did not delay in seeking reconsideration. Instead, he filed his motion in July 2004, only several months after the Supreme Court issued its decision in

Till. Accordingly, the court finds that cause exists for the court to reconsider DaimlerChrysler's claim under 11 U.S.C. § 502(j).

III. CONCLUSION

For the reasons stated above, the court **AFFIRMS** the decision of the Bankruptcy Court for the Southern District of Indiana that DaimlerChrysler's claim should be allowed with a rate of interest of 5.5%. Judgment shall enter in favor of Mr. Honeycutt.

ALL OF WHICH IS ENTERED this 24th day of October 2005.

John Daniel Tinder, Judge
United States District Court

Electronic Copies to:

Ronald J. Moore
UAW-DaimlerChrysler Legal Services Plan
Ronaldmo2@uawlsp.com

Dennis Mark Ostrowski
Mapother & Mapother PSC
loubknotices@mapother-atty.com

Copies to:

United States Bankruptcy Judge James K. Coachys
United States Bankruptcy Court

John A. O'Neal, Clerk
United States Bankruptcy Court

United States Trustee
Suite 1000
101 W. Ohio
Indianapolis, IN 46204

Trustee, Robert A. Brothers

151 N. Pennsylvania Street
Suite 1400
Indianapolis, Indiana 46204-2521